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SUBJECT: UNGA/C-6: THE SIXTH (LEGAL) COMMITTEE DEBATES THE
ANNUAL REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC),
CHAPTERS 9-11

REF: A. USUNNEWYORK 1094
[1](#)B. USUNNEWYORK 1115

[1](#)1. Summary: The 63rd UNGA Sixth Committee held part three of a three-part debate on the Report of the International Law Commission (ILC) (A/63/10) October 31- November 5. Part three's discussion consisted of Chapter 9, "Protection of Persons in the Event of Disasters;" Chapter 10, "Immunity of State Officials from Foreign Criminal Jurisdiction;" and Chapter 11, "The Obligation to Extradite or Prosecute (aut dedere aut judicare)." Paragraph 14 lists the countries that made interventions. End Summary.

[1](#)2. Part one of the debate covered Chapters 1-3, "Introductory Chapters;" Chapter 4, "Shared Natural Resources;" Chapter 5, "Effects of Armed Conflicts on Treaties;" and Chapter 12, "Other Decisions" (Ref A). The discussion in part two included Chapter 6, "Reservations to Treaties;" Chapter 7 "Responsibility of International Organizations;" and Chapter 8, "Expulsion of Aliens" (Ref B).

PRESENTATION OF CHAPTERS 9-11

[1](#)3. In his introductory statement on Chapters 9-11, Chairman of the ILC, Edmundo Vargas Correno, presented the preliminary report of Eduardo Valencia-Ospina, the Special Rapporteur on "Protection of Persons in the Event of Disasters" (A/CN.4/598). The report contains a discussion on the scope and definitions of "protection" and "disaster." The Special Rapporteur considered the rights-based approach to the topic well grounded (the ILC debate on the subject is detailed in paragraphs 227-229, and 241-250 of A/63/10). The ILC Chairman also highlighted Special Rapporteur Roman Kolodkin's report on the topic of "Immunity of State Officials from Foreign Criminal Jurisdiction." As the ILC debate indicates (Paragraphs 278-299 of A/63/10), disagreement persists on the scope of persons covered. Finally, Chairman Correno noted the report of Special Rapporteur Zdzislaw Galicki on "The Obligation to Extradite or Prosecute (aut dedere aut judicare)." Galicki proposed a revised version of draft article 1 and two new draft articles (the ILC debate is summarized in paragraphs 322-328 of A/63/10).

SCOPE OF THE WORK ON NATURAL DISASTERS

[1](#)4. Delegates disagreed on the scope of the disasters that should be included under this topic. India argued that the ILC should only discuss natural disasters, since there was already a legal framework in place regarding other disasters. Many other delegates pointed out the difficulty and impracticality of distinguishing between natural and man-made disasters, citing as examples the cases of oil spills and nuclear accidents. Japan and the UK agreed that conflict-related situations should be excluded from the scope of the study. The majority of speakers called for the ILC to focus initially on response to natural disasters. The ILC

could take up the topics of prevention, mitigation and rehabilitation later. Austria argued that disasters with trans-boundary effects should also be included.

RESPONSIBILITY TO PROTECT

15. The Cuban delegate called for the ILC to study the relation between a responsibility to protect and the principles related to sovereignty. Argentina agreed, saying that better understanding of this concept would allow a determination of the rights and obligations associated with response to a disaster. Per Department guidance, the United States also cautioned against relying on a responsibility to protect in this context. However, Russia and Poland disagreed, claiming that the existing responsibility to protect only applies to crimes such as genocide. Poland argued that more research should be done on whether the responsibility to protect could be extended to include disasters. India, Korea and Japan held that a responsibility to protect is irrelevant in this context since the primary responsibility in a disaster situation is that of the State concerned. China also said that the concept of a responsibility to protect is unhelpful and will only lead to further confusion.

LEGAL FRAMEWORK FOR ASSISTANCE IN DISASTERS

16. France asked the ILC to identify and specify the principles of customary law that exist regarding offers of assistance. Delegates emphasized the need to balance State sovereignty and humanitarian assistance. Russia argued that

there was no basis in international law for a State to force assistance on another State. The Iranian delegate conceded that the right to assistance is an exception to the principle of exclusive territorial jurisdiction, but qualified that this right should be exercised only with the recipient State's consent. Iran asked the ILC to define the obligation not to refuse a good faith offer of assistance.

17. Spain, El Salvador, Malaysia, Hungary, and Portugal believed that a rights-based approach would work in elaborating articles on assistance in disasters. However, Thailand and Romania called for a better common understanding of the meaning of a rights-based approach. France noted that a rights-based approach would not exclude humanitarian assistance from international law or excuse States from their rights and obligations. Using Department guidance, the United States expressed reservations about following a rights-based approach and suggested that the ILC focus on practical tools, such as drafting model bilateral agreements that could be used to facilitate access of people and equipment to affected areas of a country.

18. Many European delegates called for the elaboration of articles or a draft codification of the legal framework for reactions to natural disasters. New Zealand agreed and said that such a framework would facilitate international cooperation. Hungary believed that the ILC should first develop a set of non-binding guidelines. The UK, France and Iran argued that States should take into account guidelines issued in 2007 by the International Federation of Red Cross and Red Crescent Societies (IFRC).

SCOPE OF IMMUNITY

19. States stressed that the purpose of immunity was to allow officials to perform their duties. Immunity should not be an excuse for impunity. Several countries called for the ILC to clarify the term "state official," in the description of the scope of immunity. France argued for the inclusion of all state officials in the scope of the study. Argentina and Sudan also called for immunity to be considered beyond the

troika of heads of state and government, and ministers of foreign affairs. However, Norway claimed that the ILC was "casting the nets too widely." Most speakers concurred that only heads of state and government and ministers of foreign affairs would enjoy immunity *ratione personae*. India and El Salvador noted that the immunity of diplomats should not be included in the ILC's discussion since it is already codified. Several delegates insisted that the questions of immunity for families of officials should not be included in the current discussion. Per instructions, the United States, while supporting the ILC's work on this issue, urged the ILC to exercise caution and to strike the right balance as it moved forward.

¶10. Delegates expressed interest in receiving further information from the ILC on the following topics: the State practice with regard to immunity, the relationship between international criminal justice and the general state of the law of immunity, the exceptions to immunity under international law, and the distinction between jurisdiction and immunity.

OBLIGATION TO EXTRADITE OR PROSECUTE

¶11. Cuba, Korea, UK, Malaysia, Thailand, Iran, Jamaica, the United States and Israel emphasized that treaties are the source of the obligation to extradite or prosecute. The United States noted that there was not a sufficient basis in customary international law to justify preparing draft articles on this issue. Many countries requested the ILC to investigate the extent to which the obligation to extradite or prosecute has become customary international law. Canada argued that the ILC should not adopt an overly broad conception of the obligation. The Canadian delegate noted that the obligation to extradite or prosecute does not apply to the majority of crimes.

¶12. Many delegates addressed the connection between the obligation to extradite or prosecute and the principle of universal jurisdiction. Iran said that there was no direct relationship. The Republic of Korea noted that in some cases the two concepts are closely interrelated. Argentina stated that the two have a reciprocal relationship. Spain argued that in practice the obligation to extradite or prosecute and the principle of universal jurisdiction often overlap. Finally, Israel called for the obligation to extradite or prosecute to be distinguished from universal jurisdiction.

¶13. Russia, Spain, UK said that the "triple alternative" of

referring an individual to an international court was not appropriate in this context. Australia commented that the "triple alternative" mechanism is a separate one from the obligation to extradite or prosecute that the ILC is considering.

LIST OF SPEAKERS

¶14. The following countries made interventions: Finland (on behalf of the Nordic Countries - Chapters 9 and 11), Norway (on behalf of the Nordic Countries - Chapter 10), France (on behalf of the EU), Argentina, Australia, Austria, Canada, China, Cuba, Czech Republic, El Salvador, Germany, Greece, India, Iran, Israel, Italy, Jamaica, Japan, Malaysia, Mexico, Netherlands, New Zealand, Poland, Qatar, Republic of Korea, Romania, Spain, Switzerland, Thailand, the United Kingdom, and the United States. The observer from International Federation of the Red Cross and Red Crescent Societies also spoke.
Wolff